

ESTTA Tracking number: **ESTTA152735**Filing date: **07/24/2007**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Sazerac Company, Inc.
Granted to Date of previous extension	07/25/2007
Address	803 Jefferson Highway New Orleans, LA 70152 UNITED STATES
Attorney information	Heather Dunn Navarro Cooley Godward Kronish LLP 3000 El Camino RealFive Palo Alto Square Palo Alto, CA 94306 UNITED STATES trademarks@cooley.com, hdnavarro@cooley.com Phone:650.843.5000

Applicant Information

Application No	78779556	Publication date	03/27/2007
Opposition Filing Date	07/24/2007	Opposition Period Ends	07/25/2007
International Registration No.	NONE	International Registration Date	NONE
Applicant	Etablissements Nicolas 2, rue du Courson Thiasis, 94320 FRANCE		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: wines and spirits
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	664531	Application Date	10/08/1957
Registration Date	07/15/1958	Foreign Priority Date	NONE
Word Mark	NIKOLAI		
Design Mark			

Description of Mark	NONE
Goods/Services	Class U049 (International Class 033). First use: First Use: 1941/02/00 First Use In Commerce: 1941/02/00 VODKA

U.S. Registration No.	1681377	Application Date	04/15/1991
Registration Date	03/31/1992	Foreign Priority Date	NONE
Word Mark	NIKOLAI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1941/02/00 First Use In Commerce: 1941/02/00 alcoholic beverages; namely, vodka and gin		

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Signature	/hdn/
Name	Heather Dunn Navarro
Date	07/24/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 78/779,556
For the Trademark NICOLAS & Design

SAZERAC COMPANY, INC.)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
ESTABLISSEMENTS NICOLAS)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer Sazerac Company, Inc. ("Sazerac"), a Louisiana corporation having its principal place of business at 803 Jefferson Highway, New Orleans, Louisiana 70152, will be damaged by the issuance of a registration for the mark NICOLAS & Design ("Applicant's Mark"), as applied for in Application Serial No. 78/779,556 filed on December 22, 2005 by Applicant Etablissements Nicolas, a joint stock company organized in France ("Applicant"). Sazerac, having previously been granted an extension of time to oppose Applicant's Mark, hereby opposes same.

As grounds for opposition, Sazerac alleges:

1. Sazerac is a company that markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including wine, vodka, and gin. Sazerac has marketed and sold alcoholic beverages and distilled spirits in the United States for over a century.
2. Sazerac owns the following registrations in the United States for the mark NIKOLAI:

NIKOLAI (Stylized)
Reg. No. 0664531, issued July 15, 1958 for “vodka;” and

NIKOLAI
Reg. No. 1681377, issued March 31, 1992 for “alcoholic beverages;
namely, vodka and gin.”

3. Sazerac has consistently and continually marketed and sold its NIKOLAI branded distilled spirits since 1941. By virtue of its efforts and by virtue of the excellence of its products, the public has come to know, rely on, and recognize NIKOLAI as a source identifier for Sazerac’s vodka and gin products. Sazerac has gained valuable reputation and goodwill through the use and recognition of its NIKOLAI Marks over the past 66 years.

4. Upon information and belief, Sazerac alleges that on December 22, 2005 Applicant filed an Application to register the mark NICOLAS & Design. Applicant seeks registration in connection with alcoholic goods, specifically, “wines and spirits.”

5. Applicant’s Mark is likely to be confused with and mistaken for Sazerac’s NIKOLAI Marks because the NICOLAS component of Applicant’s Mark is visually similar and phonetically similar to Sazerac’s NIKOLAI Marks.

6. Both marks create a similar commercial connotation since they are variants of the male first name (or given name) Nicholas.

7. Applicant’s applicable goods, “wines and spirits,” are related to, and overlap with, Sazerac’s spirits, vodka and gin.

8. The customers of Applicant’s products directly overlap with the customers of Sazerac’s products marketed and sold under the NIKOLAI Mark.

9. As Applicant’s goods description contains no restrictions or limitations as to channels of trade, Sazerac may assume that Applicant’s mark, like Sazerac’s own NIKOLAI Marks, will be used and displayed in all accepted channels of trade. Therefore, in addition to overlapping

consumer bases, Applicant's channels of trade for its wines and spirits overlap with the channels of trade used by Sazerac in marketing, selling, and otherwise distributing its NIKOLAI vodka and gin.

10. If Applicant is permitted to register Applicant's Mark for the goods specified in the Application herein opposed, confusion resulting in damage and injury to Sazerac would likely occur. Consumers familiar with Sazerac's marks would likely perceive Applicant's wines and spirits as associated or affiliated with or sponsored by Sazerac. Such confusion would inevitably result in damage to Sazerac.

11. Customers of Sazerac's products and the relevant public are likely to misapprehend Applicant's Mark as a Sazerac mark rather than an Etablissements Nicolas mark and/or believe in error that wines and spirits offered under the NICOLAS & Design Mark are offered by, or in association with, or under license from, Sazerac.

12. Any defect, objection to, or fault found with Applicant's goods marketed under the NICOLAS & Design Mark would necessarily reflect on and injure the reputation that Sazerac has established for its alcoholic beverages and distilled spirits products.

13. Registration of Applicant's Mark would give Applicant *prima facie* evidence of the validity and ownership of Applicant's Mark and of Applicant's exclusive right to use Applicant's Mark, all to the detriment of Sazerac.

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14. Wherefore, Sazerac prays that this Opposition be sustained and that Application Serial No. 78/779,556 be denied and refused registration.

COOLEY GODWARD KRONISH LLP

Date: July 24, 2007

By: 

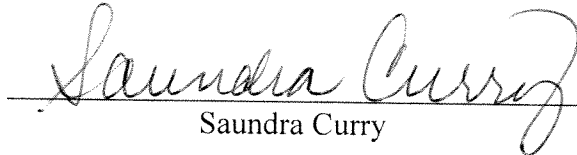
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3000 El Camino Real
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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2007, I mailed the foregoing NOTICE OF OPPOSITION regarding Sazerac Company, Inc. v. Etablissements Nicolas to Counsel for Applicant by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

James E. Rosini, Esq.
Kenyon & Kenyon
1 Broadway
New York, NY 10004-1007

Date: July 24, 2007


Sandra Curry